

situated.” Section 216(b) specifies that “[n]o employee shall be a party plaintiff to any action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.” Conditionally certifying a case as a collective action under § 216(b) permits notice to be given to potential opt-ins informing them of the collective action and permitting them to join the case pursuant to Section 216(b). *Comer v. Wal-Mart Stores*, 454 F.3d 544, 546-48 (6th Cir. 2006). *See Myers v. Hertz Corp.*, 624 F.3d 537, 555, n.10 (2d Cir. 2010) (conditional certification’s sole effect is “to facilitate the sending of notice to potential class members”).

2. The parties stipulate that this case may be conditionally certified by the Court as a collective action under Section 216(b) on behalf of Plaintiff and others similarly situated, defined as:

All former and current Home Health Aides employed by Defendant Accord Home Services, LLC during the period three years preceding the commencement of this action to the present who were not paid for all hours worked over 40 hours in a work week at time and a half his or her regular rate of pay (the “Collective Class Members”).

PROVISIONS REGARDING NOTICE

3. The parties will jointly file a proposed plan for notice which shall include (i) the form of the proposed notice, (ii) the compilation of a roster of present and former employees to whom the notice will be sent, and (iii) logistical details of the distribution.

4. First, however, the parties respectfully ask the Court to postpone notice so that the proposed due-diligence exchange and settlement discussions can take place. If the that discussion is unsuccessful, the parties will engage the services of a mediator. If the parties are ultimately unable to settle this case, they will jointly ask the Court to approve a notice informing potential opt-ins of this case and enabling them to participate.

DUE DILIGENCE EXCHANGE

5. For purposes of due diligence, the parties will exchange documents and information on or before October 31, 2019 as follows:

- (a) Defendants will provide, in Excel format, a spreadsheet identifying all Home Health Aides during the period beginning three years preceding the filing of this stipulation and the present.
- (b) Defendants will provide, in Excel format, time, payroll and other data for all Home Health Aides, showing their base hourly wages for each pay period, the amount of regular and overtime hours worked during each pay period, and the amount and dates of wages paid.
- (c) Defendants will exercise their best efforts to provide, in Excel or PDF format, records showing the dates and times that Home Health Aides were working.

SETTLEMENT DISCUSSIONS

6. Following the due diligence exchange, the parties will engage in settlement discussions. If those discussions are unsuccessful, the parties will engage in mediation with a mediator selected by mutual consent.

7. The parties agree that applicable statutes of limitations shall be tolled from the date

of the filing of this stipulation and proposed order.

Respectfully submitted:

NILGES DRAHER LLC

/s/ Christopher J. Lalak

Christopher J. Lalak (#0090079)

614 W. Superior Ave., Ste. 1148

Cleveland, OH 44113

Phone: 216.230.2955

clalak@ohlaborlaw.com

Hans A. Nilges (#0076017)

7266 Portage St., N.W., Ste. D

Massillon, OH 44646

Phone: 330.470.4428

hans@ohlaborlaw.com

Attorneys for Plaintiffs

HENDERSON, COVINGTON, MESSENGER,
NEWMAN & THOMAS CO., L.P.A.

/s/ Jerry R. Krzys

Richard J. Thomas (#0038784)

Jerry R. Krzys (#0078013)

6 Federal Plaza Central, Suite 1300

Youngstown, OH 44503

Phone: 330.744.1148 / Fax: 330.744.3807

rthomas@hendersoncovington.com

jkrzys@hendersoncovington.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on September 13, 2019 a copy of the foregoing was filed electronically in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System. Parties may access this filing through the Court's Filing System.

/s/ Christopher J. Lalak

Attorney for Plaintiff